IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2226 OF 2005

M/s. Paradise Electrolamp & Ors. ... Applicants.

V/s

Mr. Rajendra Kumar Karla & Anr. ... Respondents.

Ms. Lata Desai with Pallavi Divekar for the applicants.

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 27th April, 2005

P.C.:

1. Applicants are challenging the issuance of process by the Metropolitan Magistrate, 37th Court at Esplanade on a complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the applicants that applicant Nos. 2 and 3 are the partners of applicant No.1 and applicant No.4 is also a partner of applicant No.1. It is submitted that the applicant No.3 is house wife and does not take any part in the day-to-day affairs of applicant No.1. It is submitted that M/s Magnacore Industries and M/s Magnacore Electrical Private Limited had business dealings with the respondent No.1 and certain payments became due and payable by M/s

Magnacore Industries to respondent No.1. It is submitted that the applicants agreed to pay the liability of M/s. Magnacore Industries and, accordingly the MOU was executed on 28/5/2002. Under the said MOU, applicants issued two Pay Orders and five cheques. It is submitted that it was agreed between the parties that after respondent No.1 received an amount of Rs. 7 lakhs and cheques at serial Nos. 3 to 6, the respondent No.1 would not present the Cheque No.564371 dated 30/11/2002 for encashment and return the said cheque to the applicants. It is submitted that respondent No.1 had received the said amount of Rs 7 lakhs and instead of returning the said cheque, the same was deposited in the Bank and it was dishonoured. It is submitted that the applicants had informed the Bank to stop payment of the said cheque as there was no existing debt or liability. It is submitted that, therefore, the provisions of section 138 of the Negotiable Instruments Act were not applicable to the applicants.

3. I have perused the copy of the complaint. In the complaint, there is a specific averment that the applicants, in order to discharge the liability of their sister concern M/s Magnacore Electrical Private Limited, had issued the cheque No.564371 dated

30/11/2002 and that as per the instructions given by the applicants, the said cheque was deposited in the Bank. However, it was dishonoured and the Bank Memo which was received by the complainant showed that the applicants had stopped payment of the said cheque. Along with the complaint, a list of documents has been annexed in which there is a specific reference to the Memorandum of Understanding dated 28/05/2003 and other documents are also mentioned in the list of documents. Thus, the complainant has not suppressed any facts and the question as to whether, in fact, there is an existing debt or liability will have to be determined by the Magistrate after the evidence is adduced by both parties. Since the assertion made by the applicants in this application is seriously disputed by the respondent No.1 - Complainant, this entire aspect can only be decided by the trial court after the evidence is adduced by the complainant and the same is rebutted by the applicants in accordance with law. Thus, there is no merit in the submissions made by the learned counsel appearing on behalf of the applicants. Criminal Application is rejected.

4. All questions raised in this application, however, are kept open and the trial court shall decide these questions on merits and in accordance with law.

Applicant No.3 is exempted from appearing in the trial court. Her plea may be recorded through her advocate and the Magistrate shall grant exemption to her from appearing in the court unless her presence is absolutely necessary for the purpose of the trial. The learned Magistrate may decide the Criminal Application as expeditiously as possible and, in any case, within a period of six months. With these directions criminal application is disposed of.

V.M. KANADE, J.